

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Appellant:	<b>Fabio GIANNETTI</b>	)	Examiner:	Manglesh M. PATEL
		)		
Serial No.:	<b>10/656,776</b>	)	Art Unit:	2178
		)		
Filed:	September 4, 2003	)	Our Ref:	300202694-2US
		)		B-5184 621133-2
For:	"METHOD AND SYSTEM FOR AUTHORING CONTENT"	)	Date:	November 7, 2008
		)		
		)	Re:	<i>Appeal to the Board of Appeals</i>

**BRIEF ON APPEAL**

Commissioner for Patents

Sir:

This is an appeal from the final rejection dated May 14, 2008, for the above identified patent application. This Appeal Brief is being timely filed reply to the Notification of Non-Compliant Appeal Brief mailed on October 30, 2008 and is intended to replace in its entirety the Appeal Brief previously submitted on October 14, 2008 in support of the Notice of Appeal filed on August 14, 2008. The amount of \$500.00 for the fee set forth in 37 C.F.R. 1.17(c) for submitting this Brief was paid previously in connection with the Appeal filed in this case on March 21, 2007. If necessary, please deduct the amount of \$40.00 for the difference between the previously paid amount and the current fee set forth in 37 C.F.R. 41.20(b)(2) for submitting this Brief from deposit account no. 08-2025.

**REAL PARTY IN INTEREST**

The real party in interest to the present application is Hewlett-Packard Development Company, LP, a limited partnership established under the laws of the State of Texas and having a principal place of business at 20555 S.H. 249 Houston, TX 77070, U.S.A. (hereinafter "HPDC"). HPDC is a Texas limited partnership and is a wholly-owned affiliate of Hewlett-Packard Company, a Delaware Corporation, headquartered in Palo Alto, CA. The general or managing partner of HPDC is HPQ Holdings, LLC.

### **RELATED APPEALS AND INTERFERENCES**

There are no other appeals or interferences related to the present application.

### **STATUS OF CLAIMS**

Claims 1-14 and 18 are pending in this application, stand rejected, are the subject of this Appeal, and are reproduced in the accompanying appendix. Claims 15-17 have been canceled.

### **STATUS OF AMENDMENTS**

No Amendment After Final Rejection has been entered.

### **SUMMARY OF CLAIMED SUBJECT MATTER**

With reference to Figures 1, 3, and 4 of the instant application, claim 1 provides:

1. A method (page 2, line 30 to page 5, line 24) of authoring content to be served by a server (100; page 3, lines 12-13; page 8, lines 10-30; page 9, lines 5-12) comprising:  
authoring (501; page 10, lines 1-30) on a computing device (106; page 8, lines 17-24) a layout document (401; page 10, lines 24-30; page 11, lines 5-42) which defines at least one area (201, 202, 203, and 204; page 9, lines 14-19; page 10, lines 24-30) of a document (page 3, lines 26-30) which includes the content (page 4, lines 1-5; page 9, lines 21-30) to be published;  
authoring (503; page 12, lines 1-3) on a computing device (106; page 8, lines 17-24) at least one binding element (402, 403; page 3, lines 22-24; page 12, lines 1-3) which defines the identity and location of at least a portion of content (404, 405; page 4, lines 29 and 30; page 10, line 9; page 13, lines 1-5) and, using xpointer syntax, at least one style description file (406, 407; page 4, lines 7-10, 22-25, 27, and 28; page 9, line 10; page 13, lines 7-12) which defines a style (page 13, lines 7-26) to be applied to a selected portion of content;  
in which the step of authoring (501; page 10, lines 1-30) the layout document (401) includes allocating (502; page 11, lines 1-42) to the at least one defined area (201, 202, 203, and 204) a director (page 5, lines 11-13; page 11, lines 1-3; and page 12, lines 1-3) to at least one binding element (402, 403) such that when processed the published document includes in the

defined area (201, 202, 203, and 204) the content (404, 405) as directed by the binding element (402, 403) in the style as directed by the binding element (402, 403).

With reference to Figures 1, 3, and 4 of the instant application, claim 11 provides:

11. A data structure (page 6, line 8 to page 7, line 6) embodied in a computer-readable medium that is suitable for processing by a server (100; page 3, lines 12-13; page 9, lines 5-12) for serving as a document (page 3, lines 26-30), the data structure comprising:

a layout document (401; page 10, lines 24-30; page 11, lines 5-42) which defines at least one area (201, 202, 203, and 204; page 9, lines 14-19; page 10, lines 24-30) of a document (page 3, lines 26-30) which includes the content (page 4, lines 1-5; page 9, lines 21-30) to be published;

at least one binding element (402, 403; page 3, lines 22-24; page 12, lines 1-3) which defines the identity and location of at least a portion of content (404, 405; page 4, lines 29 and 30; page 10, line 9; page 13, lines 1-5) and at least one style description (406, 407; page 4, lines 7-10, 22-25, 27, and 28); page 9, line 10; page 13, lines 7-12) which defines a style (page 13, lines 7-26) to be applied to a selected portion of content;

in which the layout document (401) includes at least one binding element (402, 403) allocated to at least one of the areas (201, 202, 203, and 204) such that when processed the published document includes in the defined area (201, 202, 203, and 204) the content (404, 405) as directed by the binding element (402, 403) in the style as directed by the binding element (402, 403);

whereby the data structure may be rendered on a device receiving the data structure from the server (100).

With reference to Figures 1, 3, and 4 of the instant application, claim 14 provides:

14. A data structure (page 7, lines 8-19) embodied in a computer-readable medium (118, 119; page 8, lines 17-30) that is suitable for programming a processor (112; page 8, lines 17-24) of a

computing device (100; page 3, lines 12-13; page 9, lines 5-12) to author servable content, the programmed processor (112) being adapted to:

author (501; page 10, lines 1-30) a layout document (401; page 10, lines 24-30; page 11, lines 5-42) which defines at least one area (201, 202, 203, and 204; page 9, lines 14-19; page 10, lines 24-30) of a document (page 3, lines 26-30) which includes the content (page 4, lines 1-5; page 9, lines 21-30) to be published;

author at least one binding element (402, 403; page 3, lines 22-24; page 12, lines 1-3) which defines (505, 506) the identity and location of at least a portion of content (404, 405; page 4, lines 29 and 30; page 10, line 9; page 13, lines 1-5) and, using xpointer syntax, at least one style description file (406, 407; page 4, lines 7-10, 22-25, 27, and 28; page 9, line 10; page 13, lines 7-12) which defines a style to be applied to a selected portion of content (404, 405);

in which authoring (501; page 10, lines 1-30) the layout document (401) includes allocating (502; page 11, lines 1-42) to the at least one defined area (201, 202, 203, and 204) a director (page 5, lines 11-13; page 11, lines 1-3; and page 12, lines 1-3) to at least one binding element (402, 403) such that when processed the published document includes in the defined area (201, 202, 203, and 204) the content (404, 405) as directed by the binding element (402, 403) in the style as directed by the binding element (402, 403);

whereby the data structure may be rendered on a device receiving the data structure.

With reference to Figures 1, 3, and 4 of the instant application, claim 18 provides:

18. A system (page 5, line 26 to page 6, line 6) for authoring content to be served comprising:

a layout document processor circuit (106; page 8, lines 17-24) for producing a layout document (401; page 10, lines 24-30; page 11, lines 5-42) which defines at least one area (201, 202, 203, and 204; page 9, lines 14-19; page 10, lines 24-30) of a document (page 3, lines 26-30) which includes the content (page 4, lines 1-5; page 9, lines 21-30) to be published;

binding element authoring means (100; page 8, line 10 to page 9, line 12) for defining at least one binding element (402, 403; page 3, lines 22-24; page 12, lines 1-3) which defines the identity and location of at least a portion of content (404, 405; page 4, lines 29 and 30; page 10,

line 9; page 13, lines 1-5) and, using xpointer syntax, at least one style description file (406, 407; page 4, lines 7-10, 22-25, 27, and 28; page 9, line 10; page 13, lines 7-12) which defines a style (page 13, lines 7-26) to be applied to a selected portion of content (404, 405), and

in which the layout document processor (106) is arranged to allocate (502; page 11, lines 1-42) to the at least one defined area (201, 202, 203, and 204) a director (page 5, lines 11-13; page 11, lines 1-3; and page 12, lines 1-3) to at least one binding element (402, 403) such that when processed the published document includes in the defined area (201, 202, 203, and 204) the content as directed by the binding element (402, 403) in the style as directed by the binding element (402, 403).

#### **GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

- Issue 1: Whether claim 18 is patentable under 35 U.S.C. 101.
- Issue 2: Whether claims 1-14 and 18 are patentable under 35 U.S.C. 103(a) over the Hyatt document in view of the DeRose document and further in view of the Didier document.

#### **ARGUMENT**

##### **Issue 1: Whether claim 18 is patentable under 35 U.S.C. 101.**

In the final Action of May 14, the Examiner rejects claim 18 as allegedly being directed to non-statutory subject matter, then supports this rejection but complaining that the claim is directed to a circuit whereas according to the specification the layout document processor is software based and does not provide support for an actual hardware element. The Examiner's circular and confused reasoning notwithstanding, Appellant respectfully notes that software - by definition - is executed on electronic circuits and disclosing software inherently teaches the skilled person that a circuit of some sort will be necessary to execute the disclosed software. The Board's kind attention is further respectfully directed to, *inter alia*, the figures of the instant application, which depict various hardware elements such as a computer.

Appellant therefore respectfully submits that this rejection is baseless and requests the Board to kindly overturn this rejection on appeal.

**Issue 2: Whether claims 1-14 and 18 are patentable under 35 U.S.C. 103(a) over the Hyatt document in view of the DeRose document and further in view of the Didier document.**

Claims 1-14 and 18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Hyatt in view of DeRose and further in view of Didier. The Examiner essentially picks and chooses extremely narrow details from these references and cobbles them together in what he asserts to be the claimed invention. Appellant respectfully disagrees.

All three documents cited by the Examiner are quite technical and laborious to slog through. To avoid getting bogged down in irrelevant details, Appellant will first summarize the essential difference between the state of the art as reflected by the cited documents and the presently claimed invention. The cited documents describe sophisticated uses of mark-up languages such as XML and XBL, which are used *inter alia* to define the binding mechanism between the various elements in the extensible user interface language (XUL), the GUI language used by the well known Mozilla Project. XBL, for instance, is capable of binding content together with styles and can also bind handlers, such that processing actions can be dynamically switched using this binding mechanism. When the processor (e.g. the Mozilla Firefox browser) traverses the arc created by the binding, it determines the style, the content, and the appearance of a document portion, or even an action to perform. What is important to understand is that in these markup languages, the binding element itself contains the resources to be placed in the pointing element and rely upon in ID correspondence - in simpler terms, the binders point directly to the content.

In contrast, the present invention uses two levels of binders or pointers - a director to at least one binding element and located in the authored document area, and a binding element which defines the identity and location of content and a style description file. There are thus two levels of direction in the present invention - the authored content directs to a binding element which in turn points to the location of the content and the style to be applied to the content.

The Examiner alleges that the use of a director as claimed is taught in DeRose, and specifically points to p. 3. section 1 and page 22 section 5.4.4. Appellants traverse this as completely inaccurate. The Examiner's categorical statement (p. 3, 5<sup>th</sup> line from bottom of final Action) that DeRose "defines what areas of a document to publish content because it references

the content with its position/location information” is wrong. There is nothing DeRose that could possibly be twisted into an interpretation akin to the Examiner’s pronouncement, and the Examiner’s willful misquotation of DeRose is no substitute for the missing substance. Specifically, the Examiner alleges that DeRose teaches that “Xpointer allows examination of internal structure of a markup documents *content and location information, thus identifying the location of a portion of content.*” The italicized portion is sheer Examiner’s fancy, as what DeRose actually teaches is:

XPointer supports addressing into the internal structures of XML documents. *It allows for examination of a document's hierarchical structure and choice of its internal parts based on various properties, such as element types, attribute values, character content, and relative position.* In particular, it provides for specific reference to elements, character strings, and other parts of XML documents, whether or not they bear an explicit ID attribute.

...

XPointer is built on top of the XML Path Language [XPath], which is an expression language underlying the XSL Transformations (XSLT) language. XPointer's extensions to XPath allow it to:

- Address points and ranges as well as whole nodes
- Locate information by string matching
- Use addressing expressions in URI references as fragment identifiers (after suitable escaping)

The Examiner further misconstrues DeRose by asserting that “It also teaches its application using a director, such as can be seen on page 22, section 5.4.4., wherein the code shows href=’Xpointer...’” Appellant respectfully submits that this pronouncement simply makes no sense. The portion referenced by the Examiner discusses the “here” function:

The here function returns a location-set with a single member. There are two possibilities for the location returned:

\* If the XPointer being evaluated appears in a text node inside an element node, the location returned is the element node.

\* Otherwise, the location returned is the node that directly contains the XPointer being evaluated.

In the following example, the here function appears inside an XPointer that is in an attribute node. The XPointer as a whole, then, returns the slide element just preceding the slide element that most directly contains the attribute node in question.

```
<button  
  xlink:type="simple"  
  xlink:href="#xpointer(here()/ancestor::slide[1]/preceding::slide[1])">  
Previous  
</button>
```

Appellant respectfully submits that there is an insurmountable chasm in logic and the ordinary skill in the art between the teachings of DeRose as reproduced above and the Examiner's vision that "Thus the contents location is authored by being associated with link data using href, [sp] Furthermore the director is defined as an attribute format." The above very specifically teaches that Xpointer is used to return *the node that contains the Xpointer itself* - how can this possibly be construed as teaching location of contents and attribute formats?

The above notwithstanding, Appellant further notes that the Examiner's misinterpretation is in fact irrelevant to the claim language, which recites a director to at least one binding element which defines the identity and location of content and a style description file. The Examiner's assertion that DeRose teaches using Xpointer as a director that is defined as an attribute format is thus not only wrong, but immaterial - the claims do not recite using Xpointer syntax as a director, and further recite very specifically what this director points to (a binder) and which the Examiner simply does not address in the rejection.

In view of the above, Appellant respectfully submits that the Examiner has failed to make a prima facie case of obviousness because the three cited documents, even if combinable and combined as asserted by the Examiner, do not teach each and every element of the claims.

For the sake of a complete record, Appellant finally and respectfully submits that the Examiner's rejection falls short of the requirements for a proper 35 USC §103 rejection as set



forth in the MPEP as well as the new *KSR v. Teleflex* Examination Guidelines of October 10, 2007.

The new Guidelines provide that “When making an obviousness rejection, Office personnel must therefore ensure that the written record includes findings of fact concerning the state of the art and the teachings of the references applied. In certain circumstances, it may also be important to include explicit findings as to how a person of ordinary skill would have understood prior art teachings, or what a person of ordinary skill would have known or could have done. Factual findings made by Office personnel are the necessary underpinnings to establish obviousness.” There are in fact no such *factual* findings in the present Action, but rather merely conclusory statements as to what the skilled person, according to the Examiner’s opinion, would allegedly have done.

The Guidelines further admonish that “Although a rejection need not be based on a teaching or suggestion to combine, a preferred search will be directed to finding references that provide such a teaching or suggestion if they exist.” The Examiner has asserted a motivation for the alleged combination, but Appellant cannot discern this motivation being taught in any of the cited documents and can only logically surmise that it was in fact obtained from the present application.

The Guidelines further set forth that “Any obviousness rejection should include, either explicitly or implicitly in view of the prior art applied, an indication of the level of ordinary skill.” No such indication, explicit or implicit, is to be found in the Examiner’s Action.

Perhaps the most instructive portion of the Guidelines is the clear statement that “The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Court quoting *In re Kahn* stated that “ ‘[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.’ ” Again, rather than offer articulated reasoning with some rational underpinning, the Examiner merely asserts a conclusion of obviousness based upon an alleged advantage that appears to be copied from the present application rather than

found in the cited documents.

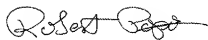
These Guidelines do make clear that “the familiar teaching-suggestion-motivation (TSM) rationale” can still be employed by Examiners in making an obviousness rejection. However, as noted above, the Examiner has not even mentioned where such suggestion is allegedly to be found in any of the cited references, and the motivation offered finds no support in the art itself.

\* \* \*

### **CONCLUSION**

For the many reasons advanced above, Appellant respectfully contends that each pending claim is patentable and reversal of all rejections and allowance of the case is respectfully solicited.

Respectfully submitted,



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**CLAIMS APPENDIX**

1. A method of authoring content to be served by a server comprising:

authoring on a computing device a layout document which defines at least one area of a document which includes the content to be published;

authoring on a computing device at least one binding element which defines the identity and location of at least a portion of content and, using xpointer syntax, at least one style description file which defines a style to be applied to a selected portion of content;

in which the step of authoring the layout document includes allocating to the at least one defined area a director to at least one binding element such that when processed the published document includes in the defined area the content as directed by the binding element in the style as directed by the binding element.

2. The method of claim 1 in which the binding element does not itself contain any style or content, only containing directors to style or content.

3. The method of claim 1 in which the content is provided as an electronic file which contains a portion of text, or an image, or a combination of text and image content.

4. The method of claim 3 in which the file comprises a section of data written for example in a mark-up language such as XML.

5. The method of claim 1 in which the style description is provided in the form of an electronic file written for example in a mark-up language such as XML.
6. The method of claim 1 in which the director to a binding element provided in the layout document is defined as ~~a~~ a style attribute within a section of machine readable data written in a mark-up language.
7. The method of claim 1 in which more than one style description is provided.
8. The method of claim 1 which comprises defining a binding element which defines the identity and location of more than one style description or the identity and location of more than one portion of content.
9. (previously presented) The method of claim 1 comprising the step of defining two or more binding elements which direct to a common portion of content or style description.
10. The method of claim 1 in which more than one binding element is provided, and the layout document includes a director to some or all of the total number of binding elements.
11. A data structure embodied in a computer-readable medium that is suitable for processing by a server for serving as a document, the data structure comprising:  
  
a layout document which defines at least one area of a document which includes the content to be published;

at least one binding element which defines the identity and location of at least a portion of content and at least one style description which defines a style to be applied to a selected portion of content;

in which the layout document includes at least one binding element allocated to at least one of the areas such that when processed the published document includes in the defined area the content as directed by the binding element in the style as directed by the binding element;

whereby the data structure may be rendered on a device receiving the data structure from the server.

12. The data structure of claim 11 which comprises one or more discrete sections of machine readable data, a first section defining the a layout document, a second section defining the at least one binding element and a third section defining content, and a fourth section defining at least one style description.

13. The data structure of claim 12 in which the discrete sections form part of a single file of machine readable data or separate files of machine readable data.

14. A data structure embodied in a computer-readable medium that is suitable for programming a processor of a computing device to author servable content, the programmed processor being adapted to:

author a layout document which defines at least one area of a document which includes the content to be published;

author at least one binding element which defines the identity and location of at least a portion of content and, using xpointer syntax, at least one style description file which defines a style to be applied to a selected portion of content;

in which authoring the layout document includes allocating to the at least one defined area a director to at least one binding element such that when processed the published document includes in the defined area the content as directed by the binding element in the style as directed by the binding element;

whereby the data structure may be rendered on a device receiving the data structure.

18. A system for authoring content to be served comprising:

a layout document processor circuit for producing a layout document which defines at least one area of a document which includes the content to be published;

binding element authoring means for defining at least one binding element which defines the identity and location of at least a portion of content and, using xpointer syntax, at least one style description file which defines a style to be applied to a selected portion of content, and

in which the layout document processor circuit is arranged to allocate to the at least one defined area a director to at least one binding element such that when processed the published document includes in the defined area the content as directed by the binding element in the style as directed by the binding element.

**EVIDENCE APPENDIX**

There is no evidence submitted with the present Brief on Appeal.

**RELATED PROCEEDINGS APPENDIX**

There are no other appeals or interferences related to the present application.